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United States Department of State

Washington, D. C. 20520

JUL - 8 1994

ACTION MEMORANDUM

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DECL: OADR

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'94 JUL-08 6:16

TO: The Acting Secretary

FROM: L - Conrad K. Harper *CKH by WDH*

SUBJECT: Rwanda War Crimes



ISSUE FOR DECISION: Whether to begin working toward the creation of an international tribunal for war crimes in Rwanda as a logical consequence of the work of the current UN Commission of Experts.

ESSENTIAL FACTORS: On July 1 the Security Council unanimously adopted Resolution 935 (Tab 1), which requests the Secretary-General to establish a Commission of Experts to examine information on reported atrocities in Rwanda and to provide its conclusions on the evidence of violations of international humanitarian law, including genocide. This includes information obtained through the Commission's own investigations or from the UN Human Rights Commission's Special Rapporteur, who has just reported his conclusion (Tab 2) that such violations have occurred on a massive scale. The Resolution also calls on states to provide any information in their possession and requests the Secretary-General to report within four months on the conclusions of the Commission of Experts and any recommendations for further steps.

We are presently working on how to do our part to carry out this Resolution and to assist the Commission of Experts in its effort. Among other things, we shall suggest possible candidates to the UN Secretariat for members of the Commission, gather and report information on violations to the UN, consult with the UN Secretariat to determine whether US contributions of personnel or funds are needed, and decide what resources we are prepared to provide.

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If, as expected, the Commission finds that serious violations have occurred, we believe the UN should take action to bring to justice those responsible. We should not permit crimes of this character and magnitude to escape punishment, nor would we want to create the impression that our concern for the victims of genocide and war crimes are limited to Europeans. We also suspect that both France and the Rwandan Patriotic Front will find it convenient for their own reasons to have an international authority assume responsibility for this task. Hopefully, this would also help break the cycle of revenge-motivated violence and thus help Rwandans move toward a reconciliation.

The logical means for doing this would be the creation by the Security Council of an international tribunal along the lines of that created for the former Yugoslavia. Such a tribunal would have jurisdiction over war crimes, crimes against humanity and genocide. In all likelihood, its structure would closely resemble that of the Yugoslav Tribunal, with an independent prosecutor, trial and appellate chambers, and a statute and rules that guarantee due process.

We may wish, for reasons of economy, consistency and equal treatment to create some linkage between the Yugoslav and Rwanda tribunals. This might mean establishing an institutional linkage, such as a shared registry or appeals chamber. Alternatively, it might simply involve the use of common facilities in The Hague, as well as the sharing of security personnel, computer assets and the like. Whatever the structure, we would hope to avoid most of the delays encountered in establishing the Yugoslav Tribunal by taking advantage of the work already done with respect to the Tribunal's Statute and Rules, the arrangements with the host government and the setting up of the Tribunal's infrastructure. We will, of course, try to avoid any action that would impair the work of the Yugoslav Tribunal.

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To ensure that these tasks are done expeditiously and in good order, we recommend beginning now to lay the groundwork for a future Rwanda Tribunal by starting consultations toward this end with the UN and such key states as France, the leading African governments and the OAU, and the other Permanent Members of the Security Council. On an urgent basis, we shall also urge France and the African states concerned to find means of detaining or preventing the escape of key suspects, pending the establishment of an international prosecution mechanism. The urgency of this task of detention is illustrated by the Department's demarche to the Government of Tanzania on the need to detain suspected war criminals Gatete and thirteen associates who recently incited populations in refugee camps to violence. It appears very likely that, absent detention, these persons would find ways to commit further crimes.

RECOMMENDATIONS: (1) That we support the creation of an international tribunal for violations of international humanitarian law in Rwanda if the current Commission of Experts confirms, within four months from now, that such violations have occurred. (All bureaus support.)

APPROVE 7/2/94 (ST) DISAPPROVE _____

(2) That we begin consultations as outlined above with France and other key states to lay the groundwork for such a tribunal and for the detention of those accused of violations. (All bureaus support.)

APPROVE 7/11/94 (ST) DISAPPROVE _____

Attachments: as stated.

Draft: L: M. Matheson

Clear: AF: E. Brynn
DRL: N. Ely-Raphel
EUR/EE: J. Moore
G: J. Farrar
H: J. Melville
IO/UNP: S. Sellers
P: E. Brimmer
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USUN/W: D. Scheffer

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